

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JACK LILLYWHITE, as Assignee of the	)	
rights of L/R ASSOCIATES,	)	
	)	No. 57218-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
MORRIS PIHA, IRVIN KARL, THE	)	UNPUBLISHED OPINION
KARL FAMILY LTD PARTNERSHIP;	)	
and STEVEN H. MILLER;	)	
	)	
Appellants.	)	FILED: July 24, 2006

PER CURIAM. The meaning of disputed contract language may be decided as a matter of law if the language and the objective manifestations of the parties' intent permit only one reasonable interpretation. Because the evidence and contract language in this case permit only one reasonable interpretation of the parties' agreement, we conclude that the trial court properly granted summary judgment.

### **FACTS**

Dentists Jack Lillywhite and James Reid formed a business partnership, L/R Associates, which owned a commercial office building in Bellevue, Washington. Sisters of Providence, a non-profit corporation, was a tenant in the building. The Providence lease could not be assigned without the landlord's

consent.

In 1999, L/R Associates sold the building to appellants Morris Piha, Irvin Karl, The Karl Family Ltd. Partnership, and Steven H. Miller<sup>1</sup> for 2.9 million dollars. Piha paid 2.6 million dollars at closing and signed a promissory note for the remaining \$300,000. Both the purchase and sale agreement and the note stated that, “if Sisters of Providence elects to renew their lease,” the promissory note would be cancelled and the purchase price reduced to 2.6 million dollars.<sup>2</sup>

In 1999, Sisters of Providence changed its name to Providence Health System. In July 2000, Providence Health System transferred some of its assets, including its Seattle hospital and its rights under the Bellevue building lease, to a subsidiary called PSMC, LLC. That entity in turn merged with Swedish Health Services. Providence then assigned its rights under the lease to Swedish. Piha consented to this assignment. Providence continued to operate its other hospitals and facilities.

In 2002, Swedish exercised its option to extend the lease term. Piha then invoked the cancellation provision in the purchase and sale agreement and refused to make the final \$300,000 payment. Lillywhite filed this breach of contract action to recover the final payment and moved for summary judgment. The court granted the motion without comment.

### **DECISION**

We review a summary judgment order de novo, performing the same

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<sup>1</sup> For simplicity's sake, the appellants will collectively be referred to as Piha.

<sup>2</sup> Clerk's Papers (CP) at 21, 50.

inquiry as the trial court.<sup>3</sup> We consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party.<sup>4</sup> Summary judgment is proper only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. CR 56(c).

The question before us is whether the trial court erred in declaring as a matter of law what the parties intended when they agreed that the final payment would be cancelled “if Sisters of Providence elects to renew their lease for an extended term.” As a general rule, the parties' intentions present questions of fact.<sup>5</sup> We may interpret contract terms as a question of law, however, when (1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable interpretation can be drawn from the extrinsic evidence used.<sup>6</sup> Extrinsic evidence may be used to elucidate, but not to modify or add to, contract terms,<sup>7</sup> and may be considered only to the extent it demonstrates objective manifestations of the parties' mutual intent.<sup>8</sup> In determining that intent, we may consider “the actual language of the disputed provisions, the contract as a whole, the subject matter and objective of the contract, the circumstances in which the contract was signed, the later acts and conduct of the parties, and the reasonableness of the parties' interpretations.”<sup>9</sup> We impute an intent

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<sup>3</sup> Kruse v. Hemp, 121 Wn.2d 715, 853 P.2d 1373 (1993).

<sup>4</sup> Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

<sup>5</sup> Paradise Orchards Gen. P'ship v. Fearing, 122 Wn. App. 507, 517, 94 P.3d 372 (2004), review denied, 153 Wn.2d 1027 (2005).

<sup>6</sup> Tanner Elec. Coop. v. Puget Sound Power & Light Co., 128 Wn.2d 656, 674, 911 P.2d 1301 (1996).

<sup>7</sup> Berg v. Hudesman, 115 Wn.2d 657, 670, 801 P.2d 222 (1990).

<sup>8</sup> Lynott v. Nat'l Union Fire Ins. Co., 123 Wn.2d 678, 683-85, 871 P.2d 146 (1994).

<sup>9</sup> Diamond “B” Constructors, Inc. v. Granite Falls Sch. Dist., 117 Wn. App. 157, 161, 70 P.3d 966 (2003); Berg, 115 Wn.2d at 667.

“corresponding to the reasonable meaning of the words used,” and “generally give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent.”<sup>10</sup>

The parties agree that the disputed provision was added because rent payments in an extended lease term would be reduced, warranting a \$300,000 reduction in the purchase price and, therefore, cancellation of the note. The parties disagree, however, on what they meant when they said cancellation would occur if “Sisters of Providence” renewed their lease. Lillywhite contends the provision means exactly what it says, i.e., the final payment would be cancelled only if *Sisters of Providence* elected to extend the lease. He points to the plain language of the provision and a provision in the lease granting Piha the right to refuse any assignment of the lease. Since the lease provision protected Piha from any extension of the lease by an assignee,<sup>11</sup> Lillywhite contends it was unnecessary to provide further protection from assignees in the purchase and sale agreement. Providence, on the other hand, had unfettered power to extend the lease. It was necessary, therefore, to protect Piha from a lease extension by *Providence*. That, Lillywhite argues, is exactly what the cancellation provision did and is the only reasonable reading of the agreement given the evidence presented below.<sup>12</sup> We agree.

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<sup>10</sup> Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503-04, 115 P.3d 262 (2005).

<sup>11</sup> See Johnson v. Yousoofian, 84 Wn. App. 755, 762-63, 930 P.2d 921 (1996).

<sup>12</sup> In addition, Lillywhite alleged in his declaration, and Piha does not dispute, that Providence intended to reach an agreement with the new owners to cancel its lease and that “was an important factor considered by L/R [Associates] in agreeing to sell the [building] to [Piha] on the terms that we sold it to them.” CP at 91.

Lillywhite's interpretation is supported by, and consistent with, the plain language of the cancellation provision, the assignment provision in the lease, and the maxim that contracts should be interpreted in a manner that elucidates, but does not modify the contract terms.<sup>13</sup> Piha's interpretation, on the other hand, is not supported by the record and falls short of creating a genuine issue of fact. Their declarations offer little more than their unilateral understanding of the agreement, which is not proper extrinsic evidence,<sup>14</sup> and the absence of any discussions in which Lillywhite mentioned his interpretation of the agreement.<sup>15</sup> Although one declaration states that "the discussion[s] always were if the lease was extended the \$300,000 was not owed,"<sup>16</sup> this statement is too vague to create an issue of fact. There is no allegation that the parties specifically discussed, let alone intended, that the cancellation provision could be triggered by someone or something other than Sisters of Providence. Finally, the subsequent statements and acts of James Reid at best provide only speculative inferences regarding the parties' intent.

In short, the extrinsic evidence submitted by Piha was insufficient to create a fact question as to whether "Sisters of Providence" meant something other than its plain meaning. Considering the language of the disputed provision

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<sup>13</sup> Berg, 115 Wn.2d at 667-69; Hearst Commc'ns, Inc. v. Seattle Times Co., 120 Wn. App. 784, 86 P.3d 1194 (2004).

<sup>14</sup> Extrinsic evidence may not be used to show unilateral or subjective intent as to the meaning of a contract term. Hearst, 120 Wn. App. at 791.

<sup>15</sup> See Hearst, 154 Wn.2d at 509 ("[I]t is unreasonable to suggest that the absence of any negotiation about the applicability of one clause to another ... leads to the conclusion that they were intended to apply to each other." ).

<sup>16</sup> CP at 112.

and the extrinsic evidence submitted below, we conclude summary judgment was properly granted.

We reject Piha's argument that the original tenant, Providence Health (formerly known as Sisters of Providence), merged with Swedish Hospital, thereby rendering the assignment provisions of the lease irrelevant and an assignment of lease rights unnecessary. The merger was between PSMC and Swedish. While PSMC purchased the Seattle operations of Providence Health, it is undisputed that Providence Health continued to operate its other facilities after the sale to PSMC. Since Providence Health, not PSMC, was the tenant under the original lease, an assignment was necessary to transfer the lease rights to PSMC and Swedish.

Affirmed.

For the court:

Dwyer, J.

Appelwick, C.J.

Ajda, J.